Supreme Court, U.S.
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No. 84-1288

In The
Supreme Court of the United States
October Term, 1984

JOHN V. EVANS, ROSE BOWMAN, GEORGE BACHIK, and WILLIAM GRUZINSKI,

Petitioners,

vs.

JEFF D., PAULA E., JOHN M. and DUSTY R., minors, by and through their next friend, CHARLES JOHNSON, III, individually and on behalf of the class they represent and MARK CLARY, intervenor,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Counsel for Respondents makes one mischaracterization of facts which permeates the Brief in Opposition to Petition for Writ of Certiorari. On page 2 of said Brief in Opposition it is stated:

> There is nothing in the record to support Petitioners' contention that there was a separate stipulation 'that the settlement was to be tendered to the District Court for approval only if it concluded the practice [of requiring a waiver of fees as a condition of settlement] was ethical.' Brief in Opposition, p. 2.

The separate stipulation by which the settlement was conditionally submitted to the District Court for approval was oral and due to the death of the court reporter, a transcript of the hearing is unavailable. However, Respondents' brief in the Court of Appeals, appended as an exhibit to the Brief in Opposition, correctly reflects the events of the hearing:

> Counsel for the parties agreed that the matter of the propriety (and ethics) of negotiating the merits and costs simultaneously should be addressed by the Court. The defendant's [sic] counsel then stated that he would tender the [settlement] Stipulation, conditional on the Court's approval of this cost's [sic] issue. Appellee's Brief, p. 3; Exhibit "A" to the Brief in Opposition.

Moreover, the separate stipulation is reflected in and served as the basis for the District Court's Order of August 10, 1983, suspending performance of the settlement pending appeal. According to that Order the parties "further stipulated that should the [District] Court conclude that it is ethical for attorneys admitted before this Court to negotiate a waiver of attorneys fees and costs concurrently with the merits of the claims that the [settlement] stipulation would be tendered for consideration by the

Court . . .". Appendix to Petition for Writ of Certiorari, p. 16a. The separate stipulation is also reflected in the Opinion of the Court of Appeals. *Jeff D. v. Evans,* 743 F.2d 648, 650 (9th Cir., 1984).

The point is: if attorney's fees and costs had not been waived, Petitioners would not have agreed to settle the case on the terms tendered, the "settlement" would not have been tendered to the District Court for approval, and the case might have been litigated at trial.

Petitioners pray that a Writ of Certiorari be issued.

Respectfully submitted this 10 day of April, 1985.

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